SINGLE BENCH

CF/1002

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH
AT BILASPUR

W.P. NO. 4436 / 2006

Petitioner : Smt.Kanti Devi Chourke
W/o Late Shri Pukhraj Singh Chourke,
Aged about 33 years,
R/o Village – Bandha Bazar,
Tehsil - Chowki
Dist : Rajnandgaon – (C.G.)

Versus

Respondents :

1. State of Chhattisgarh
Through The Secretary
Department of Education,
D.K.S.Bhawan, Rapur,
Dist : Raipur-(C.G.)

P.R. No. 4481/06
Presented by Shri Santosh Sahu
dated 17/8/06

2. Union of India
Through – The Secretary
Department of Personal Public Grievance and Personnel 3rd Floor,
Lok Naik Bhawan Khan Market,
New Delhi

3. The Commissioner,
Scheduled Caste, Scheduled Tribe Other Backward Class and Minority Welfare Department Raipur, Dist : Raipur-(C.G.)

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4. Collector Rajnandgaon,
Dist : Rajnandgaon-(C.G.)

5. State of Madhya Pradesh
Through – The Secretary,
General Administrative Department Mantralaya at Vallabh Bhawan Bhopal, Dist : Bhopal – (M.P.)

WRIT PETITION U/A 226 / 227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

4-P.R.

आदेश पत्रक

मामला क्रमांक W.P.4436/ सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित रूपये	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

25-8-2006

Mr. C.R. Sahu, counsel for the petitioner.

Mr. Satish Gupta, Deputy Govt. Advocate for the State/respondents No.1, 3 & 4, on advance copy.

Mr. S.K. Beriwal, Central Govt. Counsel for Union of India/respondent No.2, on advance copy.

By this writ petition under Article 226/227 of the Constitution of India, the petitioner has prayed that the respondents be directed to give compassionate appointment to the petitioner and also prayed for quashment of the order dated 28-6-2006 passed by respondent No.4 thereby rejecting the application of the petitioner filed for compassionate appointment.

Brief facts leading to filing of this writ petition are that the petitioner's claim is that her husband namely, Late Pukhraj Singh Chourke was working as Upper Division Teacher in the Higher Secondary School, Jadutola. He died in harness on 7-12-1996. Thereafter, the petitioner started studying and passed her high school examination in the year 1998 and higher secondary school examination in the year 2000. The petitioner is having two school going children. She has no financial support for her family. Therefore, she applied for compassionate appointment before the Commissioner, Tribal Welfare, Madhya Pradesh, Bhopal on 21-8-2000. After reorganization of the State, the said application has been sent to the State of Chhattisgarh and the same has been rejected vide memo dated 10-7-2003 (Annexure P-5) on the ground that the State Government of Chhattisgarh has taken a decision that the legal heirs of the employees who died on or after 1-11-2000 are entitled for compassionate appointment. There is one earning member in the family.

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I have heard learned counsel for the parties, on admission.

The law regarding compassionate appointment is well settled that "normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the setback. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution".

Compassionate appointment is merely an exception to the requirement of law keeping in view the fact of the death of employee while in service leaving his family without any means of livelihood and the object is to enable the family to get over sudden financial crisis. Compassionate appointments have to be made in accordance with the Rules, Regulations or administrative instructions issued by the State Government and competent authority, from time to time. The person applying for compassionate appointment must be eligible for appointment in accordance with the Rules and scheme framed by the State Government and there must be vacancy for appointment on the post on which the dependant of the deceased employee is seeking for.

In **State of Haryana & Ors. v. Rani Devi & Anr.** reported in **(1996) 5 SCC 308**, the Apex Court held that the claim of applicant for appointment

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on compassionate ground is based on the premise that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame Rules, Regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.

In **Umesh Kumar Nagpal v State of Haryana & Ors.** reported in **(1994) 4 SCC 138**, the Apex Court held that the appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. Such appointments on compassionate ground, therefore, have to be made in accordance with Rules, Regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favourable treatment to the dependant of the deceased employee must have clear nexus with the object sought to be achieved thereby, i.e. relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate

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expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned.

In **Smt. Sushma Gosain & Others v. Union of India & Ors.** reported in **(1989) 4 SCC 468**, the Apex Court observed that in claims of appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground. unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit.

Therefore, the law on the point is that in the first instance, the compassionate appointment is made to mitigate the hardship due to death of the bread-earner in the family and such appointments are therefore be provided to immediately redeem the family in distress. The delay in making the application for compassionate appointment disentitles the petitioner for compassionate appointment on the principle that the petitioner was not in the financial hardship. The compassionate appointment can only be made in accordance with the policy laid down by the State Government. Apart from that there must be vacancy to fill up the post and the petitioner seeking appointment on compassionate ground must also be eligible for the post on which the appointment is sought.

If we examine the case of the petitioner in the light of the above principle, the petitioner's husband died in the year 1996, whereas, the

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petitioner applied for compassionate appointment in the year 2000, after four years of the death of her husband. Moreover, the petitioner's application was rejected as back as in the year 2003 and this writ petition has been filed in the year 2006. Perusal of the order dated 10-7-2003 reveals that there is already one member in the family of the petitioner who is earning for the family of the petitioner. In the circumstances, on the ground of delay, the petitioner's claim for compassionate appointment was not in accordance with the principle. Moreover, as per the policy of the State Government of Chhattisgarh the legal heirs of those employees who died in harness on or after 1-11-1997 are entitled for compassionate appointment, whereas, the petitioner's husband died on 7-12-1996.

Therefore, the petitioner's application has been rightly rejected and the petitioner has not been able to make out a case for compassionate appointment and interference by this Court under Article 226/227 of the Constitution of India, as such, the writ petition is liable to be dismissed and it is hereby dismissed, in limine.

Sd/-
L.C.Bhadoo
Judge

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